STATE OF MICHIGAN

COURT OF APPEALS

TODD J. MARTINSON and KIMBERLY G. MARTINSON,

Plaintiffs-Appellants,

v

DEE L. CLEMENT, DIANE CORRADINI, CLARK W. CLEMENT, ANNA CLEMENT, ROBERT P. GEUDTNER TRUST, CANDACE E. COLE, HENRY C. COLE, REBECCA B. COLE TRUST, PENELOPE A. COLE TRUST, WILLIAM B. GOERGEN LIVING TRUST, RHONDA A. GOERGEN LIVING TRUST, JOAN D. GARDINER, ROBERT A. GARDINER, III, DANA A. BUOSCIO TRUST, and SOUTHWEST MICHIGAN LAND CONSERVANCY,

Defendants-Appellees.

UNPUBLISHED
February 4, 2014

No. 312317
Allegan Circuit Court
LC No. 11-049415-CH

Before: SAWYER, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

In this quiet title action, plaintiffs Todd J. Martinson and Kimberly G. Martinson, husband and wife, appeal by right the trial court order that granted summary disposition in favor of defendants Dee L. Clement, *et al*, under MCR 2.116(C)(8). Because the trial court did not err by finding that plaintiffs' claim was barred by res judicata, we affirm.

Plaintiffs claim that an easement established in 1922 remains effective and so allows them access to Lake Michigan over defendants' property. The easement was established by William H. Plummer who owned a large parcel of land that abutted Lake Michigan to the west and a public road, now known as 70th Street, to the east. On June 2, 1922, Plummer conveyed by warranty deed a portion of his property abutting Lake Michigan to Mary McMullen, who had plans to develop the land into a development named Sunset Manor. In the deed, Plummer reserved a 20-foot easement over McMullen's property. The heirs of Plummer deeded McMullen the same property in 1925, reserving "the use of all streets or walks laid out in [Sunset Manor], including a strip of land sixteen feet wide . . . to Lake Michigan." Sometime thereafter,

McMullen and other Sunset Manor lot owners (collectively, "McMullen") brought an action to quiet title and named Plummer and his heirs, among others, as defendants. On June 9, 1930, the trial court entered an order quieting title to Sunset Manor in McMullen's favor, providing that

> the plaintiffs, together with their immediate predecessors in title, for fifteen years heretofore and upwards, have been in the actual, full, complete, open, visible, notorious, hostile, constant, exclusive, distinct, continuous and adverse possession of the lands hereinafter described, claiming title thereto in fee simple and recognizing no interest, claim or lien of any person whatsoever, and
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> It further appearing that all of said defendants' actual, or possible, title, claims, liens or right to be entitled to enforce any such title, claims or liens, or any claims thereunder, are invalid and a cloud upon the title of the plaintiff's [sic].

The order also stated that each of the plaintiffs was "the owner in fee simple" of his or her respective lots within Sunset Manor and that

> the Court now here doth Order, Adjudge and Decree, that the claims and possible rights, titles, interests and the right to be entitled, in any contingency, to enforce the provisions in any of the conveyances aforesaid, or make any claims thereunder, of each of said defendants, in the land hereinafter described are of no validity and are a cloud upon the title of plaintiffs thereto, and ought to be, and hereby are, barred, and said plaintiffs are decreed to be the owners of said lands in fee simple as above described and their title thereto is hereby quieted.

Plummer's heirs transferred the remainder of the Plummer property to the Menzies in October 1930. In 1957, the Allegan Probate Court assigned the Menzies' estate to Jean Nash. In 1968, Nash deeded the Plummer property and lots 17 and 18 in Sunset Manor to William E. Smith. In 2006, Smith conveyed another portion of the Plummer property to Joseph and Pamela Costa. The Costas divided this property and sold a portion to plaintiffs later in 2006. None of the conveyances after 1931 contain any reference to an easement.

On December 2, 2011, plaintiffs brought the instant action, requesting the trial court enter a judgment declaring that they possessed an express easement over defendants' property. Defendants moved for summary disposition, asserting that plaintiffs' claim was barred by res judicata. The trial court agreed, finding that plaintiffs' suit was barred under res judicata because the 1930 judgment "was decided on the merits, involved the same privies, and the matter regarding the interests of property by the respective parties involved was resolved."

We "review de novo a trial court's decision on a motion for summary disposition. Equitable rulings to quiet title . . . are likewise reviewed de novo on appeal." *Richards v Tibaldi*, 272 Mich App 522, 528; 726 NW2d 770 (2006) (citation omitted).[1] Similarly, "[t]he application

[1] We note that the trial court incorrectly granted summary disposition in favor of defendants under MCR 2.116(C)(8) (failure to state a claim upon which relief can be granted). The correct

of the doctrine of res judicata is a question of law that is also reviewed de novo." *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001).

"The doctrine of res judicata precludes relitigation of a claim when it is predicated on the same underlying transaction that was litigated in a prior case." *Duncan v State*, 300 Mich App 176, 194; 832 NW2d 761 (2013). "Michigan employs a broad approach to the doctrine of res judicata." *Id*.

> The elements of res judicata are as follows: (1) the prior action was decided on the merits, (2) the prior decision resulted in a final judgment, (3) both actions involved the same parties of those in privity with the parties, and (4) the issues presented in the subsequent case were or could have been decided in the prior case. For the purposes of res judicata, parties are in privity with each other when they are so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert. [*Id*. (quotation marks and citations omitted).]

It is undisputed that the 1930 order was final and was decided on the merits. Accordingly, the first two prongs of the res judicata analysis are satisfied. Similarly, neither party disputes that the privity element is satisfied. A landowner is in privy with his predecessor in title, *Ditmore v Michalik*, 244 Mich App 569, 578 n 2; 625 NW2d 462 (2001), and the respective chains of title in this case establish that McMullen is defendants' predecessor in title and Plummer is plaintiffs' predecessor. Accordingly, the third element is satisfied.

With regard to the fourth element, the matter contested in both cases involved whether any outstanding interests to defendants' property exist. Contrary to plaintiffs' assertion, it is clear from the 1930 order that McMullen brought suit in an attempt to quiet title to her property against *any* potential claims that could be made by her predecessors in title, including Plummer and his heirs, the named defendants. The 1930 order expressly settled any claims with regard to Sunset Manor by quieting fee simple title in favor of McMullen and extinguishing any interests Plummer and his heirs may have possessed. Because an easement is an interest in land, *Forge v Smith*, 458 Mich 198, 205; 580 NW2d 876 (1998), the 1930 order therefore extinguished all easements.

Plaintiffs argue that the 1930 order validated their property rights and/or only applied to claims to the land that arose more than 15 years before the order was issued. However, the 1930 order expressly provided that all possible outside claims to McMullen's property were invalid. The 1930 order makes no distinction between claims arising more than 15 years prior and more recent claims.

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subrule for summary disposition based upon res judicata is MCR 2.116(C)(7). However, this error is not fatal because the record permits a proper review under MCR 2.116(C)(7). See *Detroit News, Inc v Policemen & Firemen Ret Sys of Detroit*, 252 Mich App 59, 66; 651 NW2d 127 (2002).

Michigan courts have "taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Adair v Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004). The court that issued the 1930 order was presented with all of the deeds in the chains of title, including Plummer's, and there is no evidence in the record indicating that Plummer's heirs appealed or objected to the language extinguishing all their possible interests in McMullen's land. Accordingly, the fourth element of the res judicata analysis is satisfied.

Because all four prongs of the res judicata analysis test were satisfied, the trial court did not err by granting summary disposition in favor of defendants on that basis.

Affirmed.

/s/ David H. Sawyer
/s/ Jane M. Beckering
/s/ Douglas B. Shapiro